

# Bankruptcy (Ireland) Bill.

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A  
B I L L

TO

Amend the Law of Bankruptcy in Ireland.

A.D. 1891.

**W**HEREAS it is expedient to amend the laws relating to bankruptcy in Ireland :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and 5 Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Bankruptcy (Ireland) Act, 1891, and shall be construed together with so much of the Irish Bankrupt and Insolvent Act, 1857, as was not repealed by the 10 Bankruptcy (Ireland) Amendment Act, 1872, and together with the Bankruptcy (Ireland) Amendment Act, 1873, except so far as the said Act of 1873 is not repugnant to anything contained in this Act.

*Short title and construction of Act with 20 & 21 Vict. c. 60, and with 35 & 36 Vict. c. 58.*

2. The terms in this Act shall have the same meanings as in 15 the Irish Bankrupt and Insolvent Act, 1857, and in the Bankruptcy (Ireland) Amendment Act, 1872.

*Interpretation of terms.*

3.—(1.) Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is 20 served on the sheriff that a bankruptcy order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official assignee, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official or trade 25 assignee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

*Duties of sheriff as to goods taken in execution.*

(2.) Where under an execution in respect of a judgment for a sum exceeding *twenty pounds*, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his

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Sale of  
assets by  
sheriff.

4. Where any goods of a debtor are taken in execution, and the sheriff has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the notice directed by rules of court has been given to the other execution creditor or creditors, who may appear before the court and be heard upon the application. 10

Landlord's  
seizure to  
be for six  
months' rent only.

5. The landlord or other person to whom any rent is due from a debtor whose goods or effects are under seizure by the sheriff, or from a bankrupt, may, at any time, either before or after the bankruptcy, distrain upon such goods or effects for the rent due to him, with this limitation, that it shall be levied only for six months' rent due at the time of seizure or adjudication in bankruptcy, but the landlord or other person to whom the rent may be due may prove under bankruptcy for the surplus due at the time of seizure. 15 20

Acts of  
bankruptcy.

6. A debtor commits an Act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days. 25

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days. 30

Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment in a county or superior court. 35

Debtor must  
file verified  
statement  
whether he  
calls private

7. Any debtor who, being unable to meet his engagements, calls a meeting of his creditors and lays before them a statement of his affairs and offers a composition, shall be deemed to have declared himself insolvent, and if such offer of composition be not accepted 40

at said meeting by two thirds in number and value of the creditors present or represented at said meeting, or at an adjourned meeting so adjourned for the purpose of enabling him to amend his offer, he, the said debtor, shall thereby be deemed to have committed an act of bankruptcy, and on the application to the court by one or more creditors to whom he is severally or jointly indebted for the sum of twenty pounds or upwards, shall by the court be adjudicated a bankrupt, and be subjected to the process and procedure consequent thereon.

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meeting of his creditors or petitioners the court for protection.

- 10 8.—(a.) Every such debtor so adjudicated, and  
 (b.) Any debtor who may petition the court for protection shall, within one week from being, as in the first case, so adjudicated a bankrupt, and, in the second case, from so petitioning the court for protection, file a statement of his affairs showing in detail his  
 15 liabilities and assets, and setting out the names and addresses of all his creditors and the sum or sums of *ten pounds* and upwards due to each creditor. The said statement shall show the status of each creditor as secured, partly secured, or unsecured; and it shall also set out opposite each debt the consideration therefor.

- 20 (1.) The debtor shall at the same time file an affidavit, in the form in the schedule hereto, verifying the said statement, and showing that no agreement for the purpose of promoting or carrying his composition or scheme was entered into between him and any other person or persons, and that no understanding  
 25 existed between him and any other person or persons, the meaning of which would be the giving a benefit or preference to any one or more creditor or creditors to the prejudice of the other creditors.

The statement to be verified by affidavit.

- Provided always, that it shall and may be lawful to and for the  
 30 debtor, with the leave of the court, to correct and supply any errors and omissions that may be in his said statement.

9. The official assignee shall within one fortnight from the filing of the said statement summon a meeting of the creditors, of which meeting each creditor shall get not less than six days notice, and  
 35 together with the notice summoning the said meeting he shall send to each creditor a copy of the debtor's statement, and also the offer of composition or scheme of arrangement. The court shall have power, on cause shown, to extend the time for these purposes.

Official assignee to summon meeting of creditors.

1. Such meeting shall be held at the chambers of the official  
 40 assignee, or at such other place as, in the opinion of the court, shall be most convenient for three fifths in number and value of the creditors;

Official assignee to act as secretary to meeting, and to take evidence.

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2. And the official assignee or his representative present at such meeting shall have power to examine on oath the debtor or any other person or persons whose evidence may tend to a complete disclosure of all facts and circumstances connected with the case, and the official assignee or his deputy shall 5 attend such meeting and act as secretary thereof, and take notes of the proceedings.

Any creditor  
can be repre-  
sented by  
proxy at  
meetings of  
creditors.

10. At all meetings of creditors any creditor may be represented by proxy in the form prescribed by Schedule B., and setting forth whether the proxy holder is authorised to vote for or against the 10 proposed offer of composition, or is authorised to use his best discretion on the occasion.

Form and  
scope of  
proxy in-  
strument.

11.—(1.) Every instrument of proxy shall be in the prescribed form, and shall be issued by the creditor or creditors, if a firm or company, and stamped by the official assignee, and every insertion 15 therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the supreme court.

(2.) General and special forms of proxy shall be sent by the 20 official assignee to the creditors together with a notice summoning a meeting of creditors, and neither the name nor the description of any person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(3.) A creditor may give a special proxy to any person to vote at 25 any specified meeting or adjournment thereof on all or any of the following matters:—

(a.) For or against any specific proposal for a composition or scheme of arrangement:

(b.) On all questions relating to any matter, other than those 30 above referred to, arising at any specified meeting or adjournment thereof.

Official  
assignee to  
cause valua-  
tion of  
debtor's  
assets to be  
made.

12. The official assignee shall, if required by a resolution of the creditors at such meeting, cause a valuation of the debtor's property and assets to be made, and he shall adjourn the meeting for such 35 time as, in the opinion of the majority of the creditors present or represented, shall be most convenient.

Creditors  
may adjourn  
meeting.

13. The creditors, by resolution, shall have power to adjourn such meeting from time to time or to such other place as they may deem desirable.

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Explanation  
of terms.

14. The word "resolution" shall mean the decision arrived at by three fifths in number and value of the creditors present or represented at such meeting, and the same shall be binding on all the other creditors, whether absent, present, or represented. Secured  
5 debts to the amount secured shall not be included in the debtor's liabilities, but shall be duly explained, as well as the consideration therefor.

Power to  
elect chair-  
man, and  
provision for  
attendance of  
debtor at  
meeting.

15. At such meeting, or any adjournment thereof, the creditors shall have power to elect a chairman, who shall sign the minutes of  
10 the said meeting, and the said minutes shall form part of the proceedings and shall be placed on the record in the said matter. The debtor shall attend each meeting, unless his presence be dispensed with by a vote of a majority of the creditors, but the meeting may proceed in his absence, and any decision arrived at shall not be  
15 invalidated by reason of his absence.

Debtor may  
be examined  
in open  
court.

16. The meeting may be adjourned for the purpose of having the debtor examined in court, if, in the opinion of a majority of the creditors present at such meeting, such examination would be  
20 advisable. Notes of such public examination to be taken and read over to the debtor.

Creditors  
may accept  
or refuse  
composition,  
and appoint  
a trade as-  
signee if  
refused.

17. At such meeting, or any adjournment thereof, the creditors may by resolution accept the debtor's offer of composition or scheme  
of arrangement, or any modification thereof, or may reject the same and elect to have the petitioning debtor adjudicated bankrupt,  
25 and in the case of the debtor already adjudicated bankrupt to have same confirmed, in both of which cases a trade assignee shall then be appointed to act with the official assignee.

Composition  
to be sub-  
mitted to the  
court for  
ratification.

18. If the creditors accept the offer or scheme of arrangement, whether on the debtor's original or amended offer, the same shall be  
30 submitted to the court within one week, and the court shall ratify the same in the hearing and presence of the chairman of the meeting at which such assent was given, and if the chairman should not be able to attend, then in the presence and hearing of any one or more of the creditors present at such meeting, provided that same was  
35 agreed to by three fifths in number and value of all the creditors, and being so every creditor shall be bound to accept such composition.

Court may  
decline to  
discharge  
bankrupt.

19. If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of  
40 creditors, or in any case in which the court is required where the

A.D. 1891. debtor is adjudged bankrupt to refuse his discharge, the court shall refuse to approve the proposal.

Court may refuse to approve of composition

20. If any facts are proved on proof of which the court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall 5 refuse to approve the proposal, unless it provides reasonable security for payment of not less than *seven shillings and sixpence* in the pound on all the unsecured debts provable against the debtor's estate.

Court may approve or disapprove.

21. In any other case the court may either approve or refuse 10 to approve the proposal.

If approved, seal of Court to be attached.

22. If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court. 15

If approved, to be binding on all the creditors.

23. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability. 20

Certificate of official assignee to be conclusive.

24. A certificate of the official assignee that a composition or 25 scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

Composition may be enforced by court.

25. The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on 30 the application shall be deemed a contempt of court.

Court may annul the composition and adjudicate debtor bankrupt.

26. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient 35 cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official assignee, or by any creditor, adjudge the debtor bankrupt,



and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

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27. Every composition or scheme of arrangement that may be agreed to shall by the official assignee be duly published in the Dublin Gazette in the terms thereof.

Composition to be published in Gazette.

28. If at any time facts come to the knowledge of the court showing that the petition for arrangement, composition, or scheme was brought about by fraud or collusion, the court shall have power to annul the said composition or scheme and to adjudicate such debtor bankrupt.

Court in case of fraud may annul proceedings.

29. When there is, in the opinion of the court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanor in cases of bankruptcy, the court may commit the bankrupt or such other person for trial. For the purpose of committing the bankrupt or such other person for trial the court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise. Nothing in this section shall be construed as derogating from the powers or jurisdiction of the High Court of Justice in Ireland.

Court may commit debtor in case of fraud.

30. Where a debtor has been guilty of any offence which is by statute made a misdemeanor in cases of bankruptcy, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

Discharge from bankruptcy no safeguard in case of fraud.

31. Where an undischarged bankrupt under this Act obtains credit to the extent of *twenty pounds* or upwards from any person without informing such person that he is an undischarged bankrupt he shall be guilty of misdemeanor, and may be dealt with and punished as if he had been guilty of misdemeanor under the Debtors Act (Ireland), 1872, and the provisions of that Act shall apply to proceedings under this section.

Undischarged bankrupt taking 20*l.* credit guilty of misdemeanor.

32.—(1.) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the

Discharge of bankrupt.

A.D. 1891. application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open court.

(2.) On the hearing of the application the court shall take into consideration a report of the official assignee as to the bankrupt's 5 conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or 10 income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: Provided that the court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanor under the Debtors Act, 1869, or the principal Act, or any other misdemeanor connected with his 15 bankruptcy, or any felony connected with his bankruptcy, unless for special reasons the court otherwise determines, and shall, on proof of any of the facts herein-after mentioned, either—

- (i) refuse the discharge; or
- (ii) suspend the discharge for a period of not less than *two* 20 *years*; or
- (iii) suspend the discharge until a dividend of not less than *ten shillings* in the pound has been paid to the creditors; or
- (iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official 25 or trade assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner 30 and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts. 35

Provided, that if at any time after the expiration of two years from the date of any order made under this section the bankrupt shall satisfy the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted 40 order, in such manner and upon such conditions as it may think fit.

(3.) The facts herein-before referred to are :—

(a.) That the bankrupt's assets are not of a value equal to *ten shillings* in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible :

(b.) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy :

(c.) That the bankrupt has continued to trade after knowing himself to be insolvent :

(d.) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it :

(e.) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities :

(f.) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs :

(g.) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him :

(h.) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action :

(i.) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors :

(j.) That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to *ten shillings* in the pound on the amount of his unsecured liabilities :

(k.) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors :

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(1.) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4.) For the purposes of this section a bankrupt's assets shall be deemed of a value equal to *ten shillings* in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

(5.) For the purposes of this section the report of the official assignee shall be *prima facie* evidence of the statements therein contained.

(6.) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official assignee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

(7.) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

(8.) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge but before its revocation.

Sections of  
Act of  
20 & 21 Vict.  
c. 60, re-  
pealed.

33. From and after the *passing of this Act* the following provisions of the herein-after named statutes shall be and are hereby repealed, viz., of the Act twenty and twenty-one Victoria, chapter sixty, sections one hundred and thirty-eight, one hundred and forty-nine, three hundred and forty-three, three hundred and forty-four, three hundred and forty-five, three hundred and forty-six, three hundred and forty-seven, three hundred and forty-nine, three hundred and fifty-three, and three hundred and fifty-four as set out in Schedule C.

Commence-  
ment of Act.

34. This Act shall come into operation on the *first day of January one thousand eight hundred and ninety-two*.

Limit of Act.

35. This Act shall apply to Ireland only.

## SCHEDULES.

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## SCHEDULE A.

I, *A.B.*, being the debtor in this matter, make oath and say that the statement which I have furnished of my affairs is true in substance and in fact.

- 5 To the best of my knowledge, information, and belief, I have truly set out all my creditors, classified as secured, partly secured, or unsecured, as well as the sum or sums due by me.

I further say that my sole reason for presenting my petition for protection was because I was unable to meet all my liabilities.

- 10 I say that the presenting of the said petition was honest and bona fide, and not due to any fraudulent or collusive agreement, arrangement, or understanding between me and any other person or persons.

- I say that I have not incorrectly set out any creditor or creditors in my said statement, and that it is not my intention or object to defeat or delay the  
15 claims of any of my said creditors, and that there is no collusion between me and any creditor or creditors, or any other person, the effect of which would be to prejudice the claims of any of my other creditors.

Sweorn, &c.

## SCHEDULE B.

- 20 I, *A.B.*, being a creditor in this matter to the amount of \_\_\_\_\_  
owing to me by the debtor \_\_\_\_\_ agree (or do not agree)  
to accept the offer of composition made in this case by the debtor, and hereby  
authorise \_\_\_\_\_ to act as proxy for me and vote at the next  
or any future meeting of creditors in this case so long as this proxy remains  
25 unaltered by me.

Signed \_\_\_\_\_

If in partnership, say

For self and partner or partners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

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